

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

EPA Region 5 Records Ctr.



275664

THE DOW CHEMICAL CO., et al.,

Plaintiffs,

v.

ACME WRECKING CO., INC., et al.,

Defendants.

Civil Action Nos.

C-1-97-0207; C-1-97-0308; C-1-01-439

(Consolidated Actions)

Judge Weber

THE DOW CHEMICAL CO., et al.,

Plaintiffs,

v.

SUN OIL COMPANY, d/b/a SUNOCO OIL
CORP., et al.,

Defendants.

UNITED STATES'

RESPONSES TO DEFENDANT

WHITTON CONTAINER INC.'S

FIRST SET OF

INTERROGATORIES, REQUESTS

FOR PRODUCTION OF

DOCUMENTS, AND REQUESTS

FOR ADMISSIONS

UNITED STATES OF AMERICA,

Plaintiff,

v.

AERONCA, INC., et al.,

Defendants.

Plaintiff the United States of America ("United States") responds to the first set of
interrogatories, requests for production of documents and requests for admissions from
Defendant Whitton Container, Inc. ("Whitton") as follows.

GENERAL OBJECTIONS

A. The United States objects to Whitton's discovery requests to the extent that they are overly broad and unduly burdensome. The United States further objects to Whitton's discovery to the extent that it asks for information that is neither relevant to the subject matter involved in the pending action nor reasonably calculated to lead to the discovery of admissible evidence.

B. The United States objects to Whitton's discovery requests to the extent that the information sought is already in the public domain, or is in possession of Whitton, or is readily obtainable by Whitton from another source in a more convenient, less burdensome, and less expensive manner.

C. The United States objects to Whitton's discovery to the extent that it seeks documents that are protected by the attorney-client privilege, work-product doctrine, joint defense privilege, environmental audit privilege, or any other privilege.

D. Where the United States provides the name of a person in response to a discovery request, the person may be contacted through undersigned counsel for the United States, unless an address for the person is given in response to the request or the response states that the address is unknown.

E. The United States objects to the instructions to Whitton's discovery to the extent that they purport to require the United States to provide exhaustive information regarding the privileged nature of any documents, information or objects requested by any Interrogatory or Request for Production. The United States will produce a privilege log of any such documents, information or objects at a mutually convenient time in the litigation.

F. The United States' substantive responses are provided subject to all of the preceding objections and interpretations, as well as the specific objections made below, and by providing substantive responses, the United States does not intend to waive any general or specific objection. Without undertaking any obligation to do so, the United States reserves the right to supplement these responses to this and all discovery in the event that additional information is made known or becomes available to them.

G. Much of the information sought in this discovery may be contained in the responses to U.S. EPA's CERCLA Section 104(e) requests for information filed by various recipients relating to the property which is the subject of the United States' complaint, including the responses filed by Whitton. The United States directs Whitton to these CERCLA Section 104(e) responses in addition to providing the following information.

RESPONSES

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 1:

Produce all documents upon which Plaintiffs rely in support of the allegation that Whitton arranged for disposal of hazardous substances at the Site. For purposes of this and subsequent discovery requests, "Site" shall mean the Skinner Landfill Superfund Site in West Chester, Ohio, and referred to as the "Site" in Plaintiffs' amended complaints.

RESPONSE:

Subject to continuing discovery, the United States will make the documents requested available by providing copies to Whitton at a time mutually agreed to by counsel for the parties.

INTERROGATORY NO. 1:

List by common name all hazardous substances that Plaintiffs contend that Whitton arranged for disposal at the Site.

RESPONSE:

The United States objects to this request to the extent that it calls for the premature disclosure of facts known and opinions held by experts. Expert reports are not required to be disclosed by the parties until September 6, 2002, after the completion of fact discovery. Without waiving this objection and subject to continuing discovery, the United States states that Whitton transported and arranged for the disposal of materials containing hazardous substances at the Site including but not limited to construction and demolition debris. Additionally, Whitton may have disposed of additional hazardous substances contained in hospital wastes.

INTERROGATORY NO. 2:

Separately state for each hazardous substance listed in response to Interrogatory No. 1 the detailed factual basis upon which Plaintiffs base their allegation that the substance was disposed of at the site by arrangement of Whitton.

RESPONSE:

The United States objects to this request to the extent that it calls for the premature disclosure of facts known and opinions held by experts. Expert reports are not required to be disclosed by the parties until September 6, 2002, after the completion of fact discovery. Without waiving this objection, and subject to continuing discovery, the factual bases for the United States' response to Interrogatory No. 1 is set forth in various documents. Those documents will be made available in response to Request for Production No. 1.

INTERROGATORY NO. 3:

List each and every date that you contend Whitton arranged for disposal of hazardous substances at the Site.

RESPONSE:

Subject to continuing discovery, the United States states that documents indicating some of the dates that Whitton transported or arranged for the disposal of hazardous substances at the Site will be made available for Whitton in response to Request for Production of Document No. 1.

INTERROGATORY NO. 4:

For each date you list in response to Interrogatory No. 3, list the quantity of each specific hazardous substance that at you contend Whitton arranged for disposal at the Site.

RESPONSE:

The United States objects to this interrogatory because it is not reasonably calculated to lead to the discovery of admissible evidence. Under the law applicable to the United States' cost recovery claim, the quantity of hazardous substances that a defendant sends to a site is not a defense to joint and several liability. Without waiving this objection and subject to continuing discovery, documents and testimony contained within documents produced in response to Request for Production of Documents No. 1 provide some indication of the quantity of material that Whitton disposed of at the Site.

INTERROGATORY NO. 5:

List all documents that were prepared as part of the investigation, risk assessment, choice of the remedy, and design of the remedy for the Site, including but not limited to, the remedial investigation/feasibility study, risk assessments, record of decision, remedial design, and any other document containing information on hazardous substances located at or migrating from the Site, the risks posed by the Site, alternative remedies evaluated for the Site, selection of the remedy for the Site, and design of the remedy. For each such document, provide the title, author, date of issuance, and document number (if any).

RESPONSE:

The United States objects to this interrogatory because the documents sought by Whitton are publicly available, easily accessible by Whitton through the local Site document repository established by U.S. EPA, and requiring the United States to answer this request will subject it to undue burden. Without waiving these objections, the United States will make the documents requested available for inspection and copying by Whitton at a location and time to be mutually agreed upon by counsel for the parties.

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 2:

Produce a copy of all documents listed in response to Interrogatory No. 5.

RESPONSE:

See response to Interrogatory No. 5 above.

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 3:

Produce a copy of all Consent Decrees entered into by the United States and potentially responsible parties pertaining to the Site, including, but not limited to, the Consent Decree entered by the Court on April 3, 2001, in *United States v. Skinner-Morgan*, No. C-1-00-424 (S.D. Ohio).

RESPONSE:

The United States objects to this discovery request because the documents requested are publicly available through the United States District Court for the Southern District of Ohio. Notwithstanding this objection, the United States will make the documents requested available for inspection and copying by Whitton at a location and time to be mutually agreed upon by counsel for the parties.

INTERROGATORY NO. 6:

State each and every fact known to you that supports your claim that "John J. Whitton Trucking, Inc. succeeded to the liabilities of John J. Whitton Trucking, Co."

RESPONSE:

The United States objects to this Interrogatory because it is premature. The United States intends to seek discovery from Whitton regarding the question raised in this Interrogatory. Without waiving this objection and subject to continuing discovery, the United States states, upon information and belief, that John J. Whitton Trucking, Inc. assumed the assets of John J. Whitton Trucking, Co., including but not limited to the trucks and containers used in the business; that John J. Whitton Trucking, Inc. engaged in the same business that John J. Whitton Trucking, Co. engaged in -- hauling construction and demolition debris; that John J. Whitton Trucking, Inc. employed many of the same employees as John J. Whitton Trucking, Co., including but not limited to the General Manager; that John J. Whitton Trucking, Inc. assumed the debts of John J. Whitton Trucking, Co.; and that John J. Whitton Trucking, Inc. operated out of the same office and location as John J. Whitton Trucking, Co.

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 4:

Produce all documents upon which Plaintiffs rely in support of the allegation that "John J. Whitton Trucking, Inc. succeeded to the liabilities of John J. Whitton Trucking, Co."

RESPONSE:

See response to Interrogatory No. 6 above, and the documents produced in response to Request for Production No. 1.

REQUEST FOR ADMISSION NO. 1:

Admit that the Site was proposed for inclusion on the National Priorities List on December 30, 1982.

RESPONSE:

The United States admits Request for Admission No. 1.

INTERROGATORY NO. 7:

If the response to Request for Admission No. 1 is a full or partial denial, state each and every fact known to you on which you base your denial.

RESPONSE:

See Response to Request for Admission No. 1.

REQUEST FOR ADMISSION NO. 2:

Admit that Whitton did not deliver any waste at the Site prior to 1987.

RESPONSE:

The United States denies Request for Admission No. 2.

INTERROGATORY NO. 8:

If the response to Request for Admission No. 2 is a full or partial denial, state each and every fact known to you on which you base your denial.

RESPONSE:

Subject to continuing discovery, the United States states that the Skinner Log lists Whitton as having utilized the Site in 1985. There may be other pre-1987 disposals that the United States is not yet aware of.

REQUEST FOR ADMISSION NO. 3:

Admit that Whitton did not deliver any waste at the Site after 1990.

RESPONSE:

The United States can neither admit nor deny this request for lack of knowledge.

INTERROGATORY NO. 9:

If the response to Request for Admission No. 3 is a full or partial denial, state each and every fact known to you on which you base your denial.

RESPONSE:

See Response to Request for Admission No. 3.

REQUEST FOR ADMISSION NO. 4:

Admit that prior to January 1992, John J. Whitton operated John J. Whitton Trucking Company as a sole proprietorship.

RESPONSE:

Based upon information provided by Whitton itself, the United States admits that the John J. Whitton Trucking Company was a sole proprietorship. As to the precise dates when the sole proprietorship was operated, the United States lacks sufficient knowledge. As to whether it was John J. Whitton himself, or John J. Whitton in conjunction with others who operated the John J. Whitton Company, the United States lacks sufficient knowledge.

INTERROGATORY NO.10:

If the response to Request for Admission No. 4 is a full or partial denial, state each and every fact known to you on which you base your denial.

RESPONSE:

See Response to Request for Admission No. 4.

REQUEST FOR ADMISSION NO. 5:

Admit that John J. Whitton died in January 1992.

RESPONSE:

Based upon information provided by Whitton itself, the United States admits that John J. Whitton died in January 1992.

INTERROGATORY NO. 11:

If the response to Request for Admission No. 5 is a full or partial denial, state each and every fact known to you on which you base your denial.

RESPONSE:

See response to Request for Admission No. 5.

REQUEST FOR ADMISSION NO. 6:

Admit that Ohio Revised Code Section 2117.06(A) requires all claimants to present their claims to the fiduciary in writing within one (1) year after the date of a person's death.

RESPONSE:

The United States objects to this request for admission because it calls for a conclusion of law. Without waiving this objection, the United States denies Request for Admission No. 6.

INTERROGATORY NO. 12:

If the response to Request for Admission No. 6 is a full or partial denial, state each and every fact known to you on which you base your denial.

RESPONSE:

The United States objects to this interrogatory because the language of Ohio Revised Code Section 2117.06(A) speaks for itself. Without waiving this objection, the United States states that Ohio Revised Code Section 2117.06(A) does not contain the language described in Request for Admission No. 6.

REQUEST FOR ADMISSION NO. 7:

Admit that you never presented a claim to John J. Whitton or to the estate of John J. Whitton.

RESPONSE:

The United States objects to this interrogatory on the grounds that it is vague, ambiguous, and misleading, and calls for a conclusion of law. Without waiving this objection, the United States denies this Request for Admission.

INTERROGATORY NO. 13:

If the response to Request for Admission No. 7 is a full or partial denial, state each and every fact known to you on which you base your denial.

RESPONSE:

The term "claim" is ambiguous and subject to numerous interpretations. In this case, in 1991, U.S. EPA sent a Request for Information under Section 104(e) to John J. Whitton Trucking, Co. Thus, John J. Whitton had knowledge of his potential CERCLA liability during his natural life. At the apparent time of Mr. Whitton's death, the United States still was investigating the claim. The Estate of John J. Whitton did not notify the United States of Mr. Whitton's death, and the United States still is unaware of the dates of the duration

of the Estate of John J. Whitton. On May 24, 1994, U.S. EPA sent John Whitton Trucking a General Notice of Potential Liability letter and a Request for Information pursuant to Section 104(e) of CERCLA. Additionally, by letter signed June 19, 1997, U.S. EPA sent the John J. Whitton Trucking, Co. a Special Notice of Liability, and by letter dated November 8, 2000, U.S. EPA sent an additional notice letter to John J. Whitton Trucking regarding CERCLA liability. Finally, in June of 2001 and August of 2001, the United States filed this action, as amended. Through these actions, the United States asserts a claim against the entity whom we believe to be the successor to the liability of John J. Whitton Trucking, Co.

REQUEST FOR ADMISSION NO. 8:

Admit that nothing prevented you from presenting a claim to John J. Whitton or the estate of John J. Whitton.

RESPONSE:

The United States denies Request for Admission No. 8.

INTERROGATORY NO. 14:

If the response to Request for Admission No. 8 is a full or partial denial, state each and every fact known to you on which you base your denial.

RESPONSE:

The United States believes issuance of a request for information under 104(e) of CERCLA provided Mr. Whitton with notice of John J. Whitton Trucking, Co.'s potential CERCLA liability. At the time of Mr. Whitton's death, however, the United States still was investigating the liability of John J. Whitton Trucking, Co. Thereafter, the estate of John J. Whitton never notified the United States of Mr. Whitton's death. The United States was not aware of his death for many years thereafter.

REQUEST FOR ADMISSION NO. 9:

Admit that John J. Whitton Trucking, Inc. first came into existence when it was incorporated in December 1993.

RESPONSE:

Upon information provided by Whitton itself, the United States admits Request for Admission No. 9.

INTERROGATORY NO. 15:

If the response to Request for Admission No. 9 is a full or partial denial, state each and every fact known to you on which you base your denial.

RESPONSE:

See response to Request for Admission No. 9.

INTERROGATORY NO. 16:

Identify with reference to each numbered discovery request all persons who assisted in the preparation of the response to the request and the compilation and production of requested documents. For each such person, provide his or her name, title, employer, business address, and business telephone number.

RESPONSE:

Scott Hansen, Remedial Project Manager, U.S. EPA Region 5 (Interrogatory 5 and 7; Request for Admission 1)

Craig Melodia, Associate Regional Counsel, U.S. EPA Region 5 (all)

Sherry Estes, Associate Regional Counsel, U.S. EPA Region 5 (Request For Admission 5; Interrogatory 14)

John Breslin, Associate Regional Counsel, U.S. EPA Region 5 (Request For Admission 5; Interrogatory 14)

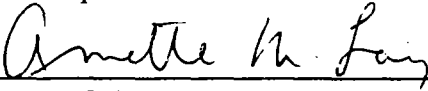
Deloris Johnson, Paralegal, U.S. EPA Region 5 (Compilation and Production of Documents)

Annette Lang, Trial Attorney, U.S. Dept. of Justice (all)

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Respectfully submitted,

W. Benjamin Fisherow
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CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of February 2002, I caused a true copy of the foregoing UNITED STATES' RESPONSE TO DEFENDANT WHITTON CONTAINER, INC.'S FIRST SET OF INTERROGATORIES, REQUESTS FOR PRODUCTION OF DOCUMENTS, AND REQUESTS FOR ADMISSIONS to be served by first-class mail, postage prepaid upon the following counsel of record:

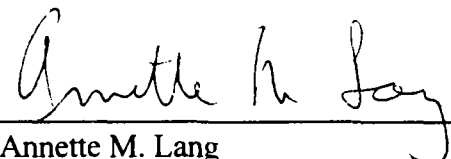
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